

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

**BOAR'S HEAD PROVISIONS
CO., INC**

and

**UNITED FOOD & COMMERICAL
WORKERS INTERNATIONAL
UNION (UFCW), AFL-CIO**

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**Case 07-CA-209874
07-CA-212031**

**RESPONDENT'S REPLY TO THE GENERAL COUNSEL'S RESPONSE IN
OPPOSITION TO RESPONDENT'S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

On November 19, 2018, The General Counsel filed a Response in Opposition to Respondent's Motion for Partial Summary Judgement (hereinafter "Response") regarding paragraph 24 of the outstanding Consolidated Complaint (hereinafter "Complaint") issued on April 27, 2018. However, the General Counsel's Response fails to demonstrate that there is indeed a genuine issue of material fact regarding paragraph 24 of the Complaint. The General Counsel alleges that Boar's Head's increased vacation benefits were implemented within two months of the company learning that employees were engaged in Union organizing. That is simply false. The General Counsel and the UFCW are attempting to characterize organizing efforts at the Holland plant as a one-time, first of its kind organizing campaign. In reality, the UFCW has engaged in organizing efforts every year since 2014 at the Holland plant with a campaign in the summer of 2016 virtually identical to that in August of 2017. The General Counsel has presented absolutely no evidence whatsoever that shows that the changes to the policies were in response to the alleged one-off union organizing campaign. Further, respondent is unaware of any case law

that supports the notion that the mere presence of union organizing, especially over a period of years, precludes an employer from making needed changes to policies. In fact, there is case law that supports the fact that the mere presence of union organizing does not mean an employer cannot make changes to policies.¹

Although the General Counsel's Response argues that there is no indication that the policies were uniformly implemented by Boar's Head at all non-union facilities, Boar's Head has presented ample evidence to the Region through written statements and uncontradicted testimony that indeed the vacation and attendance policy changes were implemented at the Holland location in the same manner, at the same time, and for the same reason that they were implemented at all other Boar's Head non-unionized locations.² As discussed in Boar's Head's Motion for Partial Summary Judgement, the Board has repeatedly found that when a company improves terms and conditions of employment company-wide, there is no violation of Section 8(a)(1).³ Additionally, the General Counsel has been provided uncontradicted testimony and evidence that Boar's Head was in the process of addressing company-wide concerns about employee turnover over an extended period prior to August, 2017, with the specific focus on its major causes, the vacation and attendance policies. Human Resources Business Partner Shannon VanNoy testified in her affidavit before the NLRB that "I had been talking with the other Human Resources Business Partners and Scott Habermehl about the possibility of changing the vacation benefits for several

¹ See *American Sunroof Corp.*, 248 NLRB 748, 748 (1980), modified on other grounds 667 F.2d 20 (6th Cir. 1981) (finding that the granting of benefits in the middle of union organizational activity "is not per se unlawful where the employer can show that its actions were governed by factors other than the pending election.")

² See Exhibit 1, Scott Habermehl Witness Affidavit, Pg. 5.

³ See *Fresh Organics, Inc.*, 350 NLRB 309, 310-311 (2007) (relying on the fact that the company's decision was before it was on notice of the organizing activity, and it extended to all stores in the following quarter); (*Dynacor Plastics and Textiles*, 218 NLRB 1404, 1404-1405 (1975) (relying on the fact that the respondent granted an additional half-day holiday for Christmas to employees at all of its locations in finding the grant was lawful); *Nalco Chemical Co.*, 163 NLRB 58, 70-71 (1967) (finding improvements to vacation and holiday benefits did not violate Sec. 8(a)(1) in part because improvements applied corporate wide).

years. I routinely expressed that we were having an issue with recruitment and retention and suggested that they increase the amount of paid vacation.”⁴ Additionally, Mr. Habermehl testified that “[t]he changes were made due to turnover and retention issues . . . we also did market surveys of all the locations where we operate and found that we offered less paid time off than other comparable employers in that area.”⁵ The evidence and testimony that has been provided to the Region clearly demonstrates that Boar’s Head viewed the vacation and attendance policies as interrelated and the main factors leading to high turnover at all of its plants. Therefore, to improve turnover and enhance employee retention, Boar’s Head implemented long-planned changes to their vacation and attendance policies that had no connection whatsoever to the union activity at the Holland plant in August, 2017.

Importantly, Region 15 dismissed allegations regarding the exact same changes to Boar’s Head’s vacation and attendance policies at their Forrest City plant. Region 15 was provided the same evidence that Boar’s Head has provided the Region in this matter. The vacation and attendance policy changes at Boar’s Head’s facility in Forrest City were implemented on the exact same day as the changes in Holland. Region 15 even specifically pointed to the fact that the changes were company-wide when they concluded that “[D]uring the course of the investigation, it was established that the changes to the vacation policy and points system had been planned prior to the most recent organizing campaign. In addition, these changes were not made only at the employer’s Forrest City, Arkansas facility; but rather, the changes in benefits were a companywide initiative. *See Nalco Chemical Co.*, 163 NLRB 58, 70-71 (1967) (finding improvements to vacation and holiday benefits did not violate Sec. 8(a)(1) in part because improvements applied corporate wide). Inasmuch as the evidence indicated these changes were already planned prior to

⁴ See Exhibit 2, Shannon VanNoy Witness Affidavit, Pg. 5.

⁵ See Exhibit 1, Scott Habermehl Witness Affidavit, Pg. 5.

the current organizing campaign, it cannot be shown that they were a result of the campaign and dismissal is appropriate.”⁶ Although the General Counsel’s Response attempts to summarily dismiss the decision by Region 15, it simply cannot be ignored since it involves the same allegations, the same facts, the same company action, and Region 15 relied on the same evidence as cited in Boar’s Head’s Motion For Partial Summary Judgement.

Simply put, neither the General Counsel nor the UFCW has presented any evidence whatsoever that Boar’s Head’s changes to their vacation and attendance policies were related to union activity at the Holland facility in any way. While Boar’s Head has presented substantial documentation and uncontradicted testimony showing that the vacation and attendance policies were company-wide policy changes that Boar’s Head contemplated for several years before they were implemented. Boar’s Head respectfully requests a finding that Boar’s Head did not violate Section 8(a)(1) of the Act as alleged in the Complaint when they changed their vacation and attendance policies and moves the Board for an order granting Boar’s Head’s Motion for Partial Summary Judgment.

RESPECTFULLY SUBMITTED,

By:



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ATTORNEYS FOR BOAR’S HEAD
PROVISIONS

⁶ See Exhibit 3, Partial Dismissal: Case 15-CA-212765.

AFFIDAVIT OF SERVICE

I, Ryan C. Krone, hereby certify that on November 20, 2018, I e-filed one copy of Boar's Head Provisions' Reply to the General Counsels Response In Opposition to Respondent's Motion for Partial Summary Judgement with the NLRB. I further certify that copies of the foregoing were sent by email to:

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Dated this 20th day of November, 2018



Ryan C. Krone

EXHIBIT 1

Confidential Witness Affidavit

I, Scott Habermehl, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

My office is located at 1819 Main Street Suite 800 Sarasota, Florida 34236

My cell phone number (including area code) is 941.504.1169

My email address is scott.habermehl@boarshead.com

I am employed by ~~Boar's Head Provisions Co., Inc.~~ Delicatessen Services Co. L.L.C. *SH*

1 I am the Director of Human Resources for ~~Boar's Head Provisions Co., Inc.~~ *↑ SH* I have been in that
2 position for about the last thirteen years. In that position I oversee all of our HR functions at our
3 manufacturing and distribution locations. I also oversee labor and employee relations at each
4 location. There are seven manufacturing and distribution locations. The employees at two of our
5 plants in Virginia are represented by UFWC Local 400. The employees at our plant in New York
6 are represented by UFCW Local 342. I am a trustee for UFCW Local 400's Health and Welfare
7 Fund and I was formerly a trustee for UFCW Local 400's Pension plan. I have been a trustee in
8 the Health and Welfare fund for approximately the last twelve years and was a trustee in the
9 pension plan from the time that I became HR Director until about a year-and-a-half ago.

10

Privacy Act Statement

The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, www.nlr.gov. Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

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1 I learned in early August 2017 from Human Resources Representative Leah Cochran that there
2 were employees talking about a Union in the maintenance area. Apparently, one of the
3 maintenance employees had come to Human Resources and said that the employees were
4 discussing a union. The employee had told the Human Resources representative, Valerie
5 Dannefel, that ~~many of the maintenance employees~~ ^{a ~~AV~~} were upset because ~~they~~ ^{he ~~AV~~} had learned that
6 employees at our ~~other facilities~~ ^{Indiana ~~AV~~} ~~are~~ ^{are} provided hand tools to use while working. I told Cochran
7 that I would look into it. I found that the other facilities were providing tools to maintenance
8 employees so I instructed the Human Resources representatives to offer hand tools to employees
9 ~~there~~ ^{in Holland ~~AV~~} as we do at other facilities.

10
11 About two weeks after I spoke with Cochran I came to the Holland facility to speak with
12 employees about the ~~Union~~ ^{Union Election process ~~AV~~} ^{& other topics}. I was present at the facility on August 21 and August 22, 2017, in
13 order to conduct meetings with the employees. I conducted approximately six meetings in order
14 to speak to all of the employees during their shift. Each meeting lasted about an hour although I
15 believe it would have taken about a half-hour if the meetings were not translated. Each of the
16 meetings were more or less identical to each other. During the meetings, I referred to a
17 powerpoint that has been provided to the Board Agent. I did not read off a script. Instead, I used
18 the powerpoint as a guide. During the meetings, I gave our position that the employees can talk
19 to management and do not necessarily need a third-party to represent them. I did say that it is
20 ultimately their decision to organize a union or not. I said this multiple times throughout the
21 presentation. I even told employees that they should show up and vote if they want a union but
22 that employees should make sure to vote. I told employees that union organizers will explain
23 their viewpoints if they come to your door so we want to make sure to explain ours. I also

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1 explained how the process works from the time that cards are signed through collective
2 bargaining if the Union were to win. I told employees that if the Union wins we would start
3 bargaining with the Union and that since we do not have a collective-bargaining agreement
4 everything would be negotiable. I said that the Union may start off by proposing a starting wage
5 of \$50 per hour and we may counter with minimum wage. I said that when it was all said and
6 done that we would find a place in the middle and that employees may have less or more than
7 they have now. I did not say that negotiations would start at zero or from scratch. I also
8 compared some of the wages and benefits in Holland with the wages and benefits at our
9 unionized facilities. I said that generally, across-the-board, the non-union employees have better
10 medical benefits. I also compared a few of the wages at the other facilities side-by-side to show
11 that the non-union wages were higher. I did not give handouts to any employees at these
12 meetings.

13
14 At one of the meetings on the first day, two employees came up to the front where I was
15 speaking after the meeting and said to the translator that they had been tricked. I do not recall
16 who was serving as the Employer's translator that day. I do not recall who the two employees
17 were. I only recall that they were female. The employees said that they had signed one of the
18 authorization cards ^{like (SD)} that they had seen on the slide but they felt tricked. According to the
19 employees, a union organizer came to their house and they said they weren't interested. Then, ^(SD) several days later
20 two other union organizers came to their house and said that they were the supervisors of the
21 previous organizer and that they wanted the employees to sign to confirm that the other
22 organizers had come. However, what they signed turned out to be the authorization card ^{something in (SD)} I had
23 put on the slide. The employees asked if there was anything they could do to get their cards back.

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if and how you could (SHA)

1 I said to come to Human Resources and that they would help you figure out ~~how~~ to revoke the
2 authorization card. I said that I think there is a way to do it but that Human Resources could
3 figure that out. That was the end of that conversation.

4
5 Employees were given the opportunity to ask questions at each of the meetings. I recall that
6 employees asked if there would always be an election and whether employees could change their
7 mind if they signed a card. I interpreted that to mean that the employee wanted to know if they
8 had to vote yes if they signed a card. I explained that there is a petition for an election but that
9 does not always mean that there is an election. I said the company could recognize the Union
10 based on the cards that they turned in. I said that if there is an election it would be by secret
11 ballot and the employees could vote yes or no. I also recall that somebody asked why I am here
12 now. I said that I do this every year. I do not visit the facility every twelve months exactly but I
13 do visit each facility approximately once a year and give a similar presentation to the one I gave
14 this time. *due to high turnover + approx 25% new people.* (SHA) I do not recall any employees saying that they wanted any specific improvements to be
15 made. I did not say that we were looking into changing the attendance or vacation policies or that
16 we were otherwise looking into changing the terms and conditions of employment for the
17 employees in any way.

18
19 I have not given any other presentations to employees regarding the union organizing drive or to
20 tell employees our viewpoint on unions.

21
22 I attended a town hall meeting on November 15, 2017. A meeting is held quarterly in which a
23 handful of employees are invited to give feedback to management employees about how things

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1 could be done better or about what we are doing right. There was no discussion about the Union
2 at the town hall meeting that I attended on November 15, 2017. I did not even speak at this
3 meeting. I just listened and took notes. I probably said hi or exchanged other pleasantries but did
4 not say anything else. I have not attended any other town hall meetings at the Holland facility.
5

6 Changes were made to the vacation and attendance policy beginning on about October 1, 2017.

7 These changes were made at all of our non-union facilities. The changes were made due to
8 turnover and retention issues. For years, we had focused on giving increased wages and bonuses
9 in order to keep employees. However, we consistently found on exit interview forms and during
10 interviews that we were not competitive with paid time off. Also, the labor market has tightened
11 significantly during the last few years. Therefore, we also did market surveys of all of the

12 locations where we operate and found that we offered less paid time off than other comparable
13 employers in that area. We decided to offer more paid time off to employees based on all that.

14 We began giving employees vacation after six months of service. It had previously taken a year
15 to earn paid time off. We also added two days of paid time off after a year and added more time
16 off after three years. I am not totally sure that this is the exact policy because it had been debated
17 for so long, but, the Employer is providing a copy of the revised vacation and attendance policy

18 that is accurate. Regarding attendance, we had made a change in 2015 or 2016 that added a
19 progressive discipline for attendance and called for attendance points to fall off after sixty days

20 rather than thirty. After that, we saw a ~~large~~ spike in employees getting terminated for attendance
21 violations. We also heard a lot of complaints from employees that never subsided until we

22 changed the attendance policy in 2017. Typically, employees do not constantly complain as they

23 did in this case.

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SH

1
2 We also made some changes to our health ^{plan} and short term benefits this year. ^{as we do every year.} We began a wellness
3 program about four or five years ^{ago} to encourage employees to engage in more healthy habits. I do
4 not recall if we ever gave incentives (beyond the wellness discount) to employees to participate
5 in the wellness program prior to 2017. In 2017, \$250 gift cards were ^{raffled} offered to employees in
6 order to encourage them to do what is necessary to complete the wellness program and earn their
7 wellness discount for 2018. This was done at all of our facilities except in Virginia where
8 employees are on the Union Health and Welfare Plan. ~~It was even done at our facility in New~~
9 ~~York where employees are on the same Health and Welfare Plan as the employees that are not~~ ^{the hourly} ^{the Company managed Health Plan}
10 ~~represented by a union.~~ There were some changes made to the health benefits this year based on
11 utilization analysis that we do each year. Rates for the next year are typically set during the
12 Summer of the previous year based on several consultations with Blue Cross Blue Shield and our
13 plan brokers. The changes that we make each year apply to all of our facilities where there is no
14 union and in New York where ~~employees are not on the Union's health and welfare plan.~~ I do
15 not believe there were any changes to our short-term disability plan this year. If there were, those
16 decisions would have been made at the same time that we were changing our ~~health insurance~~
17 plans. The changes to the short-term disability benefits also would apply to all facilities other
18 than the ones in Virginia. ^{possibly New York} ^{hourly employees at}
19
20 It is my understanding that t-shirts were distributed to employees sometime around November or
21 December 2017. I was not there when it happened at that time. Typically, Human Resources
22 distributes the tee shirts to employees using a check off sheet. The list of employees has the size
23 needed for each employee. Shirts are handed out and the person who hands them out checks the

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1 employee names off. Shirts are typically distributed every time we have some sort of a
2 celebration at any of the facilities. For example, they are usually given at the various company
3 picnics or other employee appreciation events. The t-shirts typically just feature the company
4 logo and may ^{by SV} something ~~meant to be inspiration~~ such as "we are family," or words to that effect.
5 "I believe,"

6 The Employer has maintained a no-solicitation policy that has not changed since at least January
7 2004. The no-solicitation policy is published in the employee handbook that is distributed to all
8 employees ^{at all facilities. SV}. Some facilities also have the no-solicitation policy posted around the facility. I do
9 not know if it is posted anywhere at the Holland facility.

10
11 All of our facilities have suggestion boxes. Each facility ^{had SV} has been required to have one since we
12 began focusing on continuous improvement about seven years ago. I do not know how often
13 people look at the suggestions, or which people are designated to look at them.

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I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 8 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. *to the best of my knowledge*
However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: February 21, 2018

Signature: *Scott Habermehl*

Scott Habermehl

Signed and sworn to before me on February 21, 2018 at

Grand Rapids, Michigan

Andrew Hampton
Andrew Hampton
Board Agent
National Labor Relations Board

EXHIBIT 2

Confidential Witness Affidavit

I, Shannon VanNoy, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

My office is located at 284 Roost Avenue

My office phone number (including area code) is 616.394.4746 ext. 6110

My email address is Shannon.vannoy@boarshead.com

I am employed by Delicatessen Services Co., LLC

- 1 I am employed by Delicatessen Services Co., LLC as a Human Resources Business Partner. I
- 2 have been in that position since October 2013. In that position I oversee the HR functions for the
- 3 Holland facility including recruiting and employee relations. I only work in the Holland facility.
- 4
- 5 I became aware that employees were discussing the possibility of organizing a union in the
- 6 beginning of August 2017. I was on medical leave at the time but I ^{Spoke with} ~~received a call from~~ Benefits SW
- 7 Coordinator Valerie Danneffel. Danneffel told me that there were employees talking about the
- 8 Union coming to their house. I returned from medical leave on the ^{21st} ~~13th~~ of August. SW
- 9
- 10 I was present for the majority of presentations given by Scott Habermehl regarding the union.
- 11 Habermehl was present for two days in about Mid-August. At the presentation, Habermehl

Privacy Act Statement

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1 presented information about how union elections work including what an authorization card is
2 and how signatures are collected. Habermehl also explained how the election would work if the
3 Union petitions for an election. Habermehl briefly explained how negotiations would work but
4 he did not go into much detail. For example, Habermehl said that the Union could not promise
5 anything and that nobody would know the final outcome until we complete negotiations.

6 Habermehl said that nobody would know what would be in the contract until negotiations are
7 finished. Habermehl did not say that negotiations would start from zero, or that they would start

8 from scratch, ~~during negotiations with the Union~~. Habermehl also compared the wages between *SW*

9 the union and non-union facilities. Habermehl did not ask employees what sort of changes in
10 benefits they were looking for. He also did not offer any changes in benefits to any employees.

11 Habermehl did not give any handouts to employees. Habermehl did not say anything about

12 revoking authorization cards during the presentations. However, after the presentations, a few

13 employees ^{said} expressed reservation ^{that they had been tricked into} through a translator ~~about~~ signing an authorization card and *SW*

14 asked what they could do about it. Habermehl responded that he would look into it and he may

15 have said that he would get back to the employees. I ^{do} did not recall if Habermehl referred the *SW*

16 employees to Human Resources. I do not remember if I witnessed employees bring these

17 reservations to Habermehl more than once. Concerns from employees about ^{being tricked into} signing an *SW*

18 authorization card were brought to Human Resources ^{repeatedly} even after Habermehl left so it is hard to *SW*

19 recall how many times I saw employees raise the issue with Habermehl.

20

21 In mid-August, after Habermehl completed his presentations, the Employer changed its

22 attendance policy. This was done because the Employer has been experiencing a high level of

23 turnover. About fifty percent of that turnover is attributable to attendance violations. So, we

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modified

would be

documented

necessary SW

1 ~~made~~ it so that there ~~additional~~ accommodations for doctor appointment and medically ~~necessary~~ *SW*
2 illness. We also allowed employees to call in and use vacation without it being previously *SW*
3 scheduled. The change also called for attendance points to be removed after thirty days rather
4 than sixty. These changes were implemented for all of our non-union facilities at that time. I
5 know that because I spoke with some of the other Human Resources Business Partners that had
6 questions about how the changes would be implemented. Each department was brought into the
7 conference room and told about the changes to the attendance policy. Brad Rurka, the Plant
8 Manager, explained these changes to the employees with the aid of an interpreter. No handouts
9 were given to employees at these meetings. The changes to the attendance policy were just

10 explained verbally. *at the meetings. Later, an explanation of the changes to policies was* *SW*
11 *attached to employees paychecks*

12 I received a phone call from Senior Human Resources Coordinator Leah Cochran after work
13 about one week before Walter Aguilar was disciplined. Cochran said that a manager had
14 informed her that, according to the lead employee, Walter Aguilar was telling employees to slow
15 down while they were working. At the time, I knew that Aguilar was a union supporter because *SW*

16 ~~he~~ had said something in support of the Union during Scott Habermehl's presentation. I called *SW*
17 Scott Habermehl and told him *about the allegation work* ~~what I had heard~~. The next day, I suspended Walter Aguilar *SW*

18 pending investigation. Leah Cochran then interviewed the lead employee and the other
19 employees that had claimed that Aguilar told them to slow down. When she finished, Cochran

20 shared her findings from the investigation with me. Her investigation revealed that *up to* three *SW*

21 employees all claimed that Aguilar had *encouraged employees* ~~told them~~ to slow down. I discussed the situation with the *SW*

22 Department Manager (Judy Urazinski) and Plant Manager Brad Rurka. I also spoke with Scott *SW*

23 Habermehl. The decision was to return him to work with compensation for time lost and to issue

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1 a written discipline. All of the parties involved contributed to the decision but the decision finally
2 rests with me. ^{at the time} It has never ^{before} been reported to me that any other employees had been telling others
3 to slow down their work. SID ✓

4
5 Around this same time, I was made aware that employee Nelson Langarita had come to Human
6 Resources to report that he ^{was doing enhanced} ~~had similar~~ job duties to another employee with a different title. I ^{these enhanced job duties include} ~~similar~~ SID ✓
7 spoke with Judy Urazinski and asked if what Langarita was saying was true. Urazinski looked SID ✓

8 into it and informed me that Langarita was correct. Urazinski reported that Langarita was doing SID ✓
9 ^{work} jobs similar to a Packing Specialist although he works in the Browning Department. After that, SID ✓
10 we adjusted his title to Packing Specialist and changed his pay to reflect what he was actually

11 doing. There are now a total of four Packing Specialists (including Langarita). I have never
12 discussed the Union with Nelson Langarita. I saw Langarita ^{Speak} spoke up in favor of the Union when SID ✓
13 Habermehl gave his presentation. However, one of the Human Resources employees told me that
14 he later came to Human Resources and said that he supports the company. I do not recall when I
15 was made aware of that. I do not recall if it happened before or after he was reclassified as a
16 packing specialist, but it had nothing to do with the change. SID ✓

17
18 Around this time, Larry Helfant, Senior Vice-President of ^{Sales and} Operations, told me that employee SID ✓
19 Apolonia Rios had approached him and expressed concern about her demotion. Helfant said that
20 he wanted to talk with me about the circumstances of her demotion and ^{her} his pay. Helfant asked SID ✓
21 how long she had been employed with us and asked what we did with her pay and why. I told
22 Helfant that she had been demoted in March and that her pay had been reduced by about \$3 per
23 hour. Helfant said that is a significant impact on a person's life. Helfant asked me to look into it

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1 and see if there was anything we could do about it. When our distribution center in Holland
2 closed we froze the wages of all the employees for a year and placed them in manufacturing.
3 Employees then remained at that wage rate for a year while they tried to get a manufacturing job
4 near their ^{old} rate of pay. This was done so that employees would not have their lives disrupted by ^{regardless of how much it was,} ~~the massive cut in pay,~~ ^{SV}
5 ~~We did something similar for a clerical employee on a performance~~ ^{SV}
6 ~~improvement,~~ ^{run} by putting her in manufacturing but maintaining her wages for a 12 month period.
7 ~~Based on that logic, we restored Apolonia's wage back to the highest paid position in the room~~ ^{In the interest of fairness} ~~SV~~
8 and gave her ^{equivalent} backpay to the date of her demotion. I explained to her through an interpreter that
9 her wages were being ^{adjusted} restored to their previous level for the ~~next~~ ^{retroactive to the} twelve months ^{date of demotion} to give her an ~~SV~~ ^{SV}
10 opportunity to bid into a higher paying position. Rios ^{later} ultimately applied to be a selector portioner ~~SV~~ ^{SV}
11 sometime around ^{November} ~~October~~ but the job was awarded to somebody else. The other applicant had
12 experience as a selector portioner and Rios did not. ^{have and.} Rios is still ^{currently} earning the ^{raised} restored rate while ~~SV~~ ^{SV}
13 she tries to get into a higher paid position. I believe that Rios is a union supporter, ^{do not know if} but I ^{she has} do not ~~SV~~ ^{SV}
14 ^{never discussed it with me.} know that for sure because she is very quiet. I believe that she is a union supporter because her ~~SV~~ ^{SV}
15 husband is. Rios certainly has never been outspoken about it.
16
17 Larry Helfant came back to the facility in about mid-September. Helfant met with employees to
18 explain the new schedule for vacation. ^{prior to that,} I had been talking with the other Human Resources ~~SV~~ ^{SV}
19 Business Partners and Scott Habermehl about the possibility of changing the vacation benefits
20 for several years. I routinely expressed that we were having an issue with recruitment and
21 retention and suggested that they increase the amount of paid vacation. I was not involved in the
22 final decision to implement a change in vacation benefits. Helfant explained these changes to
23 groups of employees in the cafeteria. Helfant ~~had one of these meetings per shift.~~ Helfant did this ~~SV~~ ^{SV}

2/21/2018

1 over two days in mid-September. Helfant did not ask employees what else they wanted to see
2 changed or offer any other changes to benefits. Helfant did not reference the Union or union
3 organizing during these presentations. Helfant did not give any handouts to employees. The *SW*
4 ~~handouts that have been given to employees are attached to their paychecks.~~ *SW*
5

6 I am present at as many town hall meetings as I can possibly attend. They are held monthly. The
7 morning town hall has 15-20 employees present and the afternoon town hall meeting has 10-12
8 employees present each time. At the meeting we typically talk about upcoming plant projects and
9 what might be coming up. We also give information on safety statistics and open up the floor for
10 employees to discuss concerns that they may have in their department. Union organizing has
11 never come up during any of the town hall meetings *that I have attended.* Scott Habermehl attended the November *SW*
12 town hall meeting. However, I was not there so I do not know what was said at the meeting.
13 Habermehl has never attended another town hall meeting, *that I am aware of.* *SW*
14

15 I had no involvement in setting the benefit levels for the 2018 health and welfare or short-term
16 disability benefits. I am aware that there ~~was a~~ *were* drawings for a \$250 gift card for employees who *SW*
17 completed a wellness survey. The drawing was done by Wellness Direct. Wellness Direct is the
18 Company that administers our wellness program. Wellness Direct administers the wellness
19 program for all of our non-union facilities. There was a separate drawing held for each facility. I
20 do not know how many employees or their spouses completed a health survey and entered the
21 drawing.
22

2/21/2018

1 On October 11, I was made aware at about 1:00 PM that union organizers were outside of the
2 parking lot handing out pamphlets to employees. I do not recall who told me that. I spoke with
3 our security supervisor, Ron Ortega, and asked him to let me know if the organizers ^{had} come onto SW
4 our property. At shift change, while more employees were coming on site and leaving, the
5 Human Resources office received several calls about people stepping in front of their cars as
6 they were trying to leave the lot. ^{these employees reported that were concerned they would hit one of the organizers with their car and get in trouble. SW} They did not specify if the people doing this were employees or
7 organizers. After I learned that I walked out into the parking lot and addressed the group of
8 organizers handing out leaflets. I recognized a couple of people in the parking lot as employees
9 as I walked across the parking lot. The group or organizers was standing on the edge of our
10 property in an area covered in mulch and trees. The organizers were also standing in the street.
11 There is a sign in that mulch area but I do not recall what it says. I do not recall my exact words
12 but I told the organizer that they should not be on our property. I also asked him to be
13 considerate of people coming and going. I do not recall saying anything else to the group that
14 was gathered there. I have been a Human Resources Professional for twenty-one years and I
15 know better than to restrict employees from soliciting in the parking lot when they are ^{not on work time.} off work. SW
16 As I stood there I saw some of the people handing out leaflets ^{jumping} jumping in front of cars and SW
17 trying to give a leaflet to the driver. ^{It was creating an unsafe situation.} I only stood there for about a minute or so. I then returned to SW
18 the facility. We continued to hear ^{reports} from employees that the organizers were blocking them as they
19 tried to leave the facility. Eventually, I looked out a window and saw that the group of leafleters
20 had grown and spilled over ^{across} onto Scott Street. ^{Drive this was effectively blocking passing traffic.} When I saw that I contacted the Ottawa County SW
21 Sheriff's Department non-emergency line and reported what I had seen. The person I spoke to
22 said they would alert an officer. About an hour later a deputy called and asked me what the
23 situation was. I explained what I had seen. The deputy said that they have a right to solicit. I said SW

2/21/2018

I said I'm not trying to interfere with their right to solicit
1 ~~I understand that~~ but I am concerned about the safety of people traveling on the ^{public roadway} road. The deputy SW
2 said that he was going to come by and encourage the group not to be in the street.

3
4 The organizers returned one week later and resumed handing out leaflets to cars entering and
5 exiting the parking lot. I found out from employees that reported it to the Human Resources
6 Office. I did nothing this time. I did not go outside at all or speak to anybody that was leafleting.
7 Our first shift nurse, Beatriz Lahora, reported to me that an employee had contacted the Sheriff
8 because that employee had nearly hit one of the people handing out leaflets. I do not recall if
9 Lahora said she called the Sheriff or if somebody else had. I just said ok when Lahora told me
10 that.

11
12 The organizers returned to the facility one week after that and handed out leaflets again. I did not
13 engage the organizers ~~or any of the employees handing out leaflets that time~~ in any way. The SW
14 organizers returned one more time but I do not recall the exact date. I did not engage any of the
15 organizers ~~or employees handing out leaflets that time~~ either. The Employer did not implement a SW
16 no-solicitation policy in response to the leafleting. Our no-solicitation policy has been in effect
17 ^{and has not been changed.} for years! The no-solicitation policy has been posted on the bulletin board for as long as I have SW
18 worked at the facility. ~~It is also written near the turnstiles entering the facility but I do not know~~ SW
19 ~~if that is the full policy.~~ The no-solicitation policy is also in our handbook. SW

20
21 We distributed t-shirts to employees sometime around October 2017. I was not present when the
22 t-shirts were given to the employees. I have seen the t-shirt that was given to employees. It is
23 orange and has the Boar's Head logo on the front. The back of the t-shirt says something like

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1 "crafted with pride" or words to that effect. It is not out of the ordinary for us to give t-shirts to
2 employees. ^{I don't recall how many shirts I have received} This is the second t-shirt that I have received in the four years that I have worked
3 there, but it has been several
4

SIU

SIU

5 We also held an employee appreciation luncheon in October 2017. The luncheon was held in the
6 cafeterias. We have five or six luncheons per year and we also give out food at other times
7 throughout the year like on Fat Tuesday. I served food at the employee luncheon in October
8 2017. Gift cards were given to employees but I do not know how many. I was not involved in the
9 decision to give them out. Gift cards had never been given out at previous employee luncheons

10 but we have previously done drawings for laptops that have been wiped or computer monitors, and other furniture.
11 We have also given away other prizes, ^{for example, each year we give away a trip to Florida known as the} such as trips to the Boar's Head Getaway, for one employee

12 and a guest. The getaway is typically held near headquarters in Florida. It is just a pleasure trip.
13 There is no sort of training component. Starting in November 2017, ^{as part of employee recognition program} employees have been given

SIU

14 Boar's Head Bucks that can be turned into Human Resources for gift cards. Boar's Head Bucks
15 are a form of recognition for exemplary work like safe work practices, ^{or detecting contaminants in the food} Supervisors and managers

SIU

16 could always do this in the past but it involved logging the points in a computer to be used for

17 purchases out of a catalog. We chose to begin using Boar's Head Bucks because the previous

18 employee recognition program was ^{under} rarely utilized. ^{in part because many employees have limited computer access.} The Boar's Head Bucks program is corporate-

SIU

19 wide. I believe it is even done at the unionized facilities.
20

21 Maintenance employees at our facility were given hand tools to use in November 2017.

22 Previously, employees had used their own tools. The employees were given tools ^{after several} because

SIU

23 employees had gone to help open a new facility in Indiana and reported that the mechanics in

Cases 07-CA-209874 and 07-CA-212031

we investigated and found all the other facilities provided
the tools.
1 Indiana were given tools to use. Because of that, we gave the tools to our employees in order to
2 remain consistent. They are still permitted to use their own tools if they want to. ^{Purchased} ^{to use} SIV
3

4 There has been a suggestion box at the facility for as long as I have worked there. I look in the
5 suggestion box every other week or so. The suggestion box is rarely used. It has been used a little
6 bit since it was moved to a more prominent location in Mid-August but it is still rarely used. The
7 box was moved after the lock broke on it. We chose to move it to a more prominent location in
8 order to get employees to use it.
9

10 Human Resources has received no complaints about the work done by Ascension Rios since
11 March of 2017. Rios was given a coaching in March of 2017 but he has not been disciplined
12 since that time.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 10 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct, to the best of my knowledge. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent. SW

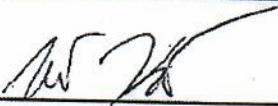
Date: February 21, 2018

Signature: 

Shannon VanNoy

Signed and sworn to before me on February 21, 2018 at

Grand Rapids, Michigan


Andrew Hampton
Board Agent

National Labor Relations Board

EXHIBIT 3



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 15
600 South Maestri Place – 7th Floor
New Orleans, LA 70130-3413

Agency Website: www.nlrb.gov
Telephone: (504)589-6362
Fax: (504)589-4069

August 31, 2018

Alvin Dees
P.O. Box 2204
Forrest City, AR 72336

Re: Boar's Head Provisions Co., Inc.
Case 15-CA-212765

Dear Mr. Dees:

We have carefully investigated and considered your charge that Boar's Head Provisions Co., Inc. has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the following allegations:

- In or around the last week of August 2017, and continuing, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by posting a flyer disparaging the union and making threats of unspecified reprisal and loss of access to management in order to discourage employees from supporting the union and/or becoming union members.

Section 8 (c) of the National Labor Relations Act states the expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of the Act, if such expressions contain no threats of reprisal or forces or promise of benefits. Although Section 8(c) makes specific reference to whether speech can constitute or be evidence of an "unfair labor practice," the section articulates standards that have been construed as applying to employer speech more generally. See, e.g., NLRB v. Gissel Packing Co., 395 U.S. 575, 617 (1969) ("[A]n employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the National Labor Relations Board"); United Rentals, Inc., 349 NLRB 190, 191 (2007) ("[T]ruthful statements that identify for employees the changes unionization will bring inform employee free choice which is protected by Section 7 and the statements themselves are protected by Section 8(c).").

In the instant case, the statements contained in the flier do not rise to the level of unlawful statements, but rather, amount to routine campaign propaganda which is protected by Section 8(c). Accordingly, dismissal is appropriate.

- In or around the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by creating the impression of surveillance when, during a mandatory meeting, it told employees they knew that the Union was in town.

While you allege the Employer violated the Act by creating the impression of surveillance when it informed employees the Union was in town during a mandatory employee meeting that took place in August 2017, the evidence is insufficient to establish a violation of the Act. At the time the alleged statement was made, the evidence obtained in the investigation established the Union's presence was very public including passing out union literature outside the Employer's facility.

It is not a violation of the Act for an employer to merely observe open union activity, Hoschton Garment Co., 279 NLRB 565, 567 (1986); Fred'k Wallace & Son, 331 NLRB 914 (2000). If an employee openly engages in union activity in a readily observable location, a statement that reveals the employer's knowledge of that activity does not create an impression of surveillance. It merely creates the impression that the employer has observed open union activity, which is perfectly lawful. See Sunshine Piping, Inc., 350 NLRB 1186, 1186-1187 (2007); Michigan Roads Maintenance Co., 344 NLRB 617, 617 fn. 4 (2005).

Inasmuch as the Employer appears to have observed open union activity, and made a statement which revealed their knowledge of that activity, its actions do not amount to an unlawful impression of surveillance. Accordingly, dismissal is appropriate.

- In or around the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act when, during a mandatory meeting, it promised employees additional benefits of two extra vacation days and a change to the employee point system in order to discourage employees from supporting the union and/or becoming union members.
- In or around the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act when it gave employees additional benefits of two extra vacation days and changed the employee point system in order to discourage employees from supporting the union and/or becoming union members.

While you contend the Employer violated the Act by promising employees, and later granting employees, additional benefits, the evidence was insufficient to substantiate this allegation. During the course of the investigation, it was established that the changes to the vacation policy and points system had been planned prior to the most recent organizing campaign. In addition, these changes were not made only at the Employer's Forrest City, Arkansas facility; but rather, the changes in benefits were a companywide initiative. See *Nalco Chemical Co.*, 163 NLRB 58, 70-71 (1967) (finding improvements to vacation and holiday benefits did not violate Sec. 8(a)(1) in part because improvements applied corporate wide). Inasmuch as the evidence indicated these changes were already planned prior to the current organizing campaign, it cannot be shown that they were a result of the campaign and dismissal is appropriate.

- In or around the last week of August 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act when, during a mandatory meeting, it made disparaging statements about the Union to employees in order to discourage employees from supporting the union and/or becoming union members.

You contend that during a mandatory meeting in August, the Employer made disparaging statements regarding the Union in order to discourage employees from supporting the union and/or becoming union members. In examining the statements you allege amounted to disparity, the Region found the statements did not violate the Act, but instead, were allowed pursuant to Section 8(c). See, e.g., *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969) ("[A]n employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the National Labor Relations Board"); *United Rentals, Inc.*, 349 NLRB 190, 191 (2007) ("[T]ruthful statements that identify for employees the changes unionization will bring inform employee free choice which is protected by Section 7 and the statements themselves are protected by Section 8(c)."). Accordingly, dismissal is appropriate.

- On about October 24, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by denying employees, including Alvin Dees, a raise in retaliation for their union and/or protected concerted activity.
- On or around October 24, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by granting a raise to employees in order to discourage employees from supporting the union and/or becoming union members.
- On or around October 24, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by excluding employees from a company meeting in retaliation for their union and/or protected concerted activities.

August 31, 2018

In order to establish the Employer has violated the Act as alleged, it must be shown that you engaged in activities protected by the Act, that the Employer knew of those activities and harbored animus against you because of those activities, and that you suffered some harm as a result of that animus. Furthermore, the Employer can present a legitimate defense if it demonstrates that it would have taken the action against you whether or not you engaged in the protected activities. See *Wright Line*, 251 NLRB 1083 (1980).

The investigation disclosed that the Company held a meeting in October 2017, with employees who were scheduled to receive raises. Since your position was not selected to receive a raise, you were not required to attend the meeting. While the Employer did not grant you a raise, the evidence was insufficient to establish the Employer's failure to grant you and other similarly situated employees a raise violated the Act. Specifically, raises were granted to particular groups of employees on a company-wide basis, and other similarly situated employees, at other locations, also did not receive raises. Therefore, the evidence was insufficient to overcome the Employer's *Wright Line* defense and, therefore, the allegation is dismissed.

- **On or around April 9, 2018, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained and coerced its employees in the exercise of rights protected by Section 7 of the Act by suspending employee Alvin Dees in retaliation for his protected concerted activities, union activity, and Board activity.**

On April 9, 2018, you admit that you and a co-worker engaged in a verbal confrontation on the workroom floor. As a result of this altercation, both of you were suspended pending an investigation of the incident. The investigation disclosed evidence which established that the Employer did not deviate from its normal policies or procedures, but instead, sent both of you home as it had done for other employees who engaged in similar conduct in the past. Therefore, the evidence was insufficient to overcome the Employer's *Wright Line* defense that it suspended you for violating its policy concerning such confrontations. Accordingly, dismissal is appropriate.

- **For the past six months and continuing, the above-named Employer has maintained an unlawful solicitation/distribution rule.**

The Employer maintains a solicitation/distribution rule which allows for exceptions to be made for Company supported charitable efforts such as the United Way and the collection of money for presents, flowers, parties, donations, or for causes of particular hardship. It was determined that such a rule does not violate the Act. While the Board has found violations where no solicitation/distribution rules contained broad and sweeping bans against solicitation for groups or organizations which are not sanctioned by management (See *UMPC* 362 NLRB No. 191, (2015)), the Board has also held no solicitation/distribution rules will not be found to be unlawful merely because it allows charitable solicitations as an exception to the general rule. See *Hammary Manufacturing Corp.*, 265 NLRB 57, (1982) (Board ruled that the Employer's no-solicitation rule was not unlawful because it contained a "sole exception" for the annual United Way campaign) and *Flagstaff Medical Center*, 357 NLRB 659 (2011) (Board upheld the dismissal of an allegation where an employee had been prohibited from engaging in union

solicitation in the kitchen even though the employee had previously been permitted to solicit for the United Way where the judge ruled that "the employer may permit such charitable solicitations on an ad hoc basis without negating an otherwise legitimate exclusionary rule."). Accordingly, dismissal is appropriate.

The following allegations have been retained for further processing:

- In or around September 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by interrogating employees about their Union activities.
- In or around September 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by creating the impression of surveillance of employees' union activities.
- In or around September 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained and coerced its employee's in the exercise of rights protected by Section 7 of the Act by threatening employees with discipline for talking to other employees about the Union and forcing them to fill out Union cards.
- On or around October 10, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by interrogating employees about their Union activities.
- On or around October 10, 2017, the above-named Employer, by its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by threatening employees with termination in retaliation for their union activity and in order to discourage union end/or protected concerted activity.
- On or around April 23, 2018, the above-named Employer, by its officer, agents, and supervisors, interfered with, restrained and coerced its employees in the exercise of rights protected by Section 7 of the Act by terminating employee Alvin Dees in retaliation for his protected concerted activities, union activity, and Board activity.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

August 31, 2018

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal **MAY NOT** be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **September 14, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than September 13, 2018. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

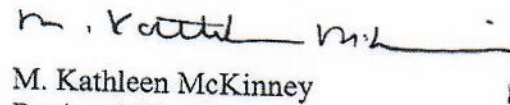
Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before September 14, 2018**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after September 14, 2018, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at

August 31, 2018

a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,


M. Kathleen McKinney
Regional Director

MKM/pal

Enclosure

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